



THE INTERIM

June 2010

A monthly newsletter of the Montana Legislative Branch

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The Interim, along with up-to-date information about interim committees, is also available on the Legislative Branch Website at leg.mt.gov.

National Conference of State Legislatures to Hold Annual Summit in KY July 25-28

Legislators who plan to attend or are interested in attending the National Conference of State Legislatures Annual Summit July 25-28 in Louisville, Kentucky, should contact Susan Byorth Fox, executive director of Legislative Services Division, at 406-444-3066.

Although access to legislator training funds must be approved by a legislator's caucus leader, Fox can provide information on pre-conferences. She will also provide contact information for those who wish to invite legislators to various events at the summit.

For more information about the summit, visit ncsl.org and click on the bright green icon with a racehorse on the left side of the screen.

Longtime Legal Director, Code Commissioner to Retire in July



Greg Petesch

Greg Petesch is retiring officially on July 2 but will no longer be in the office as of mid-June.

Greg has served as Legal Services Director and Code Commissioner in the Legislative Branch for 26 years. He has been a part of the Legislative Services Division, originally known as the Legislative Council, for 31 years.

You may want to call or email him to say good-bye. Greg, we will all miss you greatly, applaud your public service, and wish you all the best in your next adventures, whatever they may be. Thanks for everything and Happy Trails!

Legislators, Stand up and Be Counted For Bringing Civics to Life in Classrooms

The National Conference of State Legislatures has put out its annual call to coordinators of the Legislators Back to School Program in all 50 states. NCSL wants to know how many legislators have participated in the program over the past school year and how many students benefitted from those visits.

The Legislators Back to School Program was created in 2000 to help young citizens gain a better understanding of the value and concepts of representative democracy.



These include the importance of negotiation and compromise and the challenges involved in balancing competing interests in a

diverse society. At the same time, the program brings civics to life by giving students a chance to talk face to face with state lawmakers.

Nationwide, more than 1,200 lawmakers participate in the program each year, according to NCSL. A list of the top 10 states for participation is available on the NCSL website at http://ncsl.typepad.com/the_thicket/2009/10/top-ten-for-back-to-school-program.html. Last year, Utah and Massachusetts topped the list with 94 percent participation.

“Legislator and student participation numbers are vital in evaluating the worth of the program and leveraging continued funding,” according to Gayle Shirley, program coordinator in Montana. “I know many Montana legislators take time from their busy schedules to meet with students in the classroom. They deserve recognition for giving of their time and expertise to young Montanans.”

Shirley encouraged legislators who visited schools during the 2009-2010 school year to notify her by email at gshirley@mt.gov if they have not already done so.

“Please indicate about how many students you met with and whether you have any suggestions for improving the

program in Montana,” she added. “I’d also love to hear about your personal experiences with the students and see any photos you may have taken.”

For more information about the Legislator Back to School Program in Montana, visit <http://leg.mt.gov/css/For-the-Classroom/Back-to-School.asp> or contact Shirley, 406-444-2957.

Here is a preliminary list of legislators who have volunteered to take part in the Back to School Program during the past year:

| | |
|----------------------|----------------------|
| Rep. Shannon Augare | Rep. Llew Jones |
| Sen. Joe Balyeat | Rep. Deborah Kottel |
| Rep. Bill Beck | Sen. Dave Lewis |
| Rep. Paul Beck | Rep. Gary MacLaren |
| Rep. Anders Blewett | Rep. Robert Mehlhoff |
| Sen. John Brueggeman | Rep. Mike Milburn |
| Sen. Roy Brown | Rep. Jesse O’Hara |
| Sen. Taylor Brown | Rep. Ken Peterson |
| Rep. Bob Ebinger | Rep. JP Pommichowski |
| Rep. John Fleming | Rep. Scott Reichner |
| Rep. Julie French | Rep. Cary Smith |
| Rep. Brian Hoven | Rep. Bill Wilson |
| Rep. Pat Ingraham | |

CFHHS Tackles High-Profile Topics: Medical Marijuana, Health Care Reform

The Children, Families, Health, and Human Services Interim Committee delved into two high-profile topics during its April meeting: some of the impending changes in health insurance laws required by federal health care reform and the numerous concerns being voiced around the state about the Montana Medical Marijuana Act.

The committee also reviewed and took public comment on a draft white paper prepared for the HJR 39 study of community services for people with developmental disabilities and co-occurring mental illness. The committee approved the white paper and asked that it be sent to the state Department of Public Health and Human Services (DPHHS) for consideration of the issues and recommendations it identified.

Health Care Study, Federal Health Reform

As part of its ongoing SJR 35 study of health care, the committee heard presentations covering:

- state activities related to the federal health care legislation passed by Congress this year;
- the work being done by the Montana HealthCare Forum, a coalition of health insurers, health care providers, and health advocacy groups;
- issues surrounding medical costs related to ordering tests or procedures in an effort to reduce the risks of medical malpractice lawsuits; and
- proposals for reducing childhood obesity and, as a result, related health problems.

State Insurance Commissioner Monica Lindeen discussed several elements of the federal health reform law; some of those elements are scheduled to go into effect in the next several months and others will require legislative action in the near future. Two key provisions she covered were:

- Creation of a temporary insurance pool for individuals who have pre-existing medical conditions and have been uninsured for at least six months. The insurance pool must be in place by July 1, 2010, and will be funded by the federal government through December 2013. Montana is to receive \$16 million for the program, which the State Auditor's Office estimates will cover about 400 Montanans.
- Creation of a health insurance "exchange," or online marketplace where people can shop for insurance and compare policies and prices. The exchange initially will be open only to small businesses and individuals who don't have employer-sponsored coverage. The exchange must be in place by 2014, but the state must submit its preliminary plans to the federal government by January 2013. Lindeen said that means the 2011 Legislature will need to take up legislation on the topic.

DPHHS Director Anna Whiting Sorrell discussed the likely impact of the law on the state's Medicaid program, which provides insurance coverage for low-income and disabled individuals.

Beginning in 2014, anyone at or below about 138 percent of the federal poverty level will be covered by Medicaid. That

significantly expands the current Montana program, which does not cover childless adults and which provides coverage to adults with dependent children only if they have an income below 33 percent of the poverty level.

About 80,000 people are typically enrolled in the state's Medicaid program at any one time. Whiting Sorrell said the new law could add as many as 84,000 more Montanans to the program by 2019. The federal government will pay the full costs of the expansion from 2014 through 2016. States will begin paying a portion of the costs in 2017. Montana's costs for the expansion could reach an additional \$82.5 million by 2019, according to DPHHS projections.

To continue its work on the SJR 35 study, committee members asked for more information in June about existing health insurance exchanges in Massachusetts and Utah and about defensive medicine issues. They also:

- approved the drafting of a bill to resolve concerns raised by the HealthCare Forum about barriers to licensing of physicians in medical residency programs;
- agreed to ask health care licensing boards to collect certain demographic information from licensees to help better plan for workforce needs; and
- decided to encourage the Board of Public Education to support school-based activities to promote childhood health.

Medical Marijuana Act

The committee took up the Montana Medical Marijuana Act as an emerging issue, based on the sharp increase in the number of registered medical marijuana patients and numerous concerns raised by local governments and law enforcement in recent months.

The law allows people to apply for a medical marijuana card if a physician certifies that they suffer from one of several debilitating medical conditions listed in law and that the benefits of using marijuana for the medical condition may outweigh the risks of its use.

Four panels covered areas of concern to state agencies, law enforcement, local government, schools, and the medical marijuana industry. Issues raised by panelists included:

- the type of medical review that should be required before a physician issues a written certification;

- whether the amount of marijuana a patient is allowed to possess should vary based on the form in which it is used;
- whether the types of debilitating medical conditions allowed in law need to be re-examined and either be expanded or restricted;
- whether businesses growing medical marijuana need to meet local building, fire, and safety codes, business licensing requirements, and zoning regulations; and
- whether people authorized to grow medical marijuana should be regulated more strictly by the state.

The committee asked staff members to work with interested parties to review the laws and develop proposals for potential legislation that would deal with concerns raised at the meeting. Committee staff will report on the discussions and any proposals for law changes at the committee's June 28 meeting, which will be held in Room 137 of the Capitol. A time has not yet been announced.

An agenda and other meeting materials for the June meeting will be posted on the committee website at leg.mt.gov/cfhhs as they become available.

ELG to Review Historical Preservation, Construction Rules, Agency Legislation

On June 10, the Education and Local Government Interim Committee will take on an ambitious agenda covering a broad range of subjects from wildland fire to the Historical Society to education policy.

The state Department of Labor and Industry was scheduled to hold a rules hearing before June 10 on its list of wildfire-resistant construction techniques that may be used by local governments when reviewing subdivision applications in wildfire-prone areas. SB 51, enacted in 2007, required the rulemaking to guide local governments in which types of construction techniques and materials may be used to mitigate fire hazards as provided in 76-3-504(1)(e), MCA. Sections 50-60-901 and 50-60-902, MCA, govern the rulemaking, specifying that the rules may not be considered building codes and are for local subdivision review only.

Staff will update the committee on the outcome of the hearing.

Also June 10, the committee will continue a study of historic preservation by hearing a presentation from preservation advocates and recommendations for committee review.

Virtual Tour of Proposed Historical Society

Preserving Montana history has been on the minds of many citizens and policymakers across the state, as plans for construction of a new historical society building take shape. Although the Montana Historical Society and Museum are headquartered in Helena, their collections reflect the history and prehistory of all of Montana.

MHS Director Richard Sims will discuss the plans with the committee and present a computer-generated tour of the facility to be constructed if appropriate funding is secured. A Department of Administration representative and the project architect will also be on hand.

State Agency Legislation, Local Govt. Initiatives

ELG will review proposed legislation by state agencies for which the committee has monitoring responsibilities: the Office of Public Instruction, State Board of Education, Board of Public Education, Board of Regents, and Office of the Commissioner of Higher Education. Entities attached to these agencies include the Montana Historical Society, the Montana State Library Commission, and the Montana Arts Council. Some of these entities will not be proposing any measures for consideration by the 2011 Legislature.

Representatives of the Montana Association of Counties and the Montana League of Cities and Towns have been invited to present any legislative initiatives those organizations hope to pursue in 2011.

Other agenda items include an update on the progress of the education Shared Policy Goals and Accountability Measures Subcommittee. The subcommittee has been focusing on accountability measures since ELG's March meeting and will provide the results of that work.

June 10 is ELG's second-to-last meeting this interim, so members have been asked to present any proposals for committee legislation they wish to have drafted for review at the final meeting August 16-17.

The committee will meet June 10 in Room 137 of the Capitol. The time has not yet been determined. For more information about the committee, contact Leanne Kurtz, committee staff, at lekurtz@mt.gov or 406-444-3593, or check the committee website at leg.mt.gov/elgic.

Energy Panel Taking Public Comment on Proposed Revision to Energy Policy

In the next few weeks, the Energy and Telecommunications Interim Committee will ask for public comment on a proposal to revise the state's energy policy and on two pieces of related draft legislation.

The committee met May 13 and developed the draft energy policy statements. Members also asked staff to draft two bills to implement the proposed policy.

The ETIC set out to design an energy policy that reflects Montana's responsibility to provide reliable energy supplies at reasonable rates, to create conditions for the efficient use of energy, and to promote sustainable and responsible energy development. The committee reached a consensus on findings and recommendations to provide a legislative framework for Montana to maximize its energy assets and to overcome energy obstacles.

In conjunction with the findings and recommendations, the committee asked staff to prepare two bill drafts for expanding the state energy policy for introduction next session. The bill drafts are:

- LC 6000 "State Energy Policy – Revised Goal Statements"
- LC 6001 "State Energy Policy – Goal and Development Process"

The committee plans to issue a news release in mid-June announcing a 30-day public comment period on a draft energy report discussing information and processes followed by the ETIC in reaching its conclusions, as well as on the bill drafts. It also will notify by email all interested parties on its electronic mailing list.

The committee will meet in July to review the public comments and discuss whether to revise its proposals based on any of the comments.

SB 290, enacted last session, revised the process for updating the state energy policy and required the ETIC to review and potentially revise existing policy.

Montana's current energy policy under 90-4-1001, MCA, simply states that it is the policy of Montana "to promote energy efficiency, conservation, production, and consumption of a reliable and efficient mix of energy sources that represent the least social, environmental, and economic costs and the greatest long-term benefits to Montana citizens."

At the May meeting, the committee used policy proposals developed by Sens. Cliff Larsen and Verdell Jackson, public testimony, and a summary of written public comment prepared by staff to reach a consensus on 25 energy policy statements.

The committee first focused on energy policy statements related to energy conservation and energy efficiency in new construction. It reached consensus on several statements including:

"Energy efficiency and conservation form the cornerstone of Montana's energy policy and have the potential to meet the majority of Montana's growing energy needs and save consumers money on their energy bills."

The committee then shifted to a broader discussion of energy policy.

The ETIC has rescheduled its next meeting to July 28-29 in Room 172 of the Capitol. A time has not yet been set.

For more information about the ETIC and its energy policy development, contact Sonja Nowakowski at snowakowski@mt.gov or 406-444-3078.

Environmental Quality Council Solicits Public Comment on Interim Studies

The Environmental Quality Council met in Helena May 6-7 and decided to seek public comment in June on three draft study reports: the HJR 1 study of using biomass for energy, the SJR 28 study of increasing recycling in Montana, and the HJR 15 study of providing incentives to landowners

for granting public access to their lands for recreational and tourism-related purposes.

The draft reports, along with instructions for submitting comments, will be posted on the EQC website at leg.mt.gov/eqc. The EQC will email interested parties when the 30-day comment period opens.

Biomass Study (HJR 1)

The council asked staff to prepare two bill drafts for public comment. The first would clarify the powers of the Board of Environmental Review related to air quality permitting and rulemaking for wood chippers and grinders. The second would allow regulated utilities to file automatic rate adjustments to recover fluctuating fuel costs related to electrical generation from biomass.

The EQC also approved several findings and a draft study report for public comment. The EQC findings focus on ways to increase the use of forest biomass from federal, state, tribal, and private forests.

Recycling Study (SJR 28)

The draft report on recycling includes discussions of the history of recycling in Montana, financial incentives and funding mechanisms for recycling, and the challenges facing recycling, particularly in rural areas. The draft report includes EQC recommendations that Montana's solid-waste reduction targets be updated and that rural communities be encouraged to work together to create increased opportunities and networks for recycling and to investigate a variety of collection methods to promote recycling in their communities.

The report concluded that developing local markets for recycled materials could help overcome a significant barrier to increased recycling: the high cost of transporting recycled material to distant markets.

Public Access on Private Land (HJR 15)

Because of the state's current austere financial condition, the EQC has decided not to propose legislation that would promote a state-supported program for providing financial incentives to private landowners who grant public access to their land for tourism and recreational activities. However, the EQC said in its draft study report that the aim of a



Members of the Environmental Quality Council and the public got a demonstration of new, more efficient equipment used to bundle wood waste for use in biomass energy production. The demonstration was part of the EQC's HJR 1 biomass study.

program envisioned by HJR 15 is laudable. Should state finances improve in the future, the draft report outlines several funding and program structure options that could be considered.

The council next meets July 22-23 in Room 172 of the Capitol. The time has not yet been determined. The proposed agenda and meeting materials will be available at leg.mt.gov/eqc at least 10 days before the meeting. For more information, contact EQC staffers Todd Everts at 406-444-3747 or teverts@mt.gov, or Hope Stockwell at 406-444-1640 or hstockwell@mt.gov.

Law and Justice Committee Considers Potential New Laws to Curb DUIs

The April meeting of the Law and Justice Interim Committee included reports on DUI programs, a panel discussion on a 24/7 Sobriety Pilot Project in Lewis and Clark County for misdemeanor DUI offenders, the competency of guardian ad litem attorneys appointed for children in child custody cases, and challenges for community placement of sexual offenders. The committee also reviewed and discussed 11 preliminary bill draft proposals to revise DUI laws.

Fiscal Reports

Legislative Fiscal Division staff reported financial information on several DUI programs:

- Half of the \$200 drivers' license reinstatement fees (which total about \$400,000 annually) is used to help fund county DUI task forces, which focus on local prevention and education.
- Two municipal courts, one tribal court, and one district court received federal grants through the Montana Department of Transportation totaling \$442,000 for FY 2010 to establish special DUI treatment court dockets.
- State revenue from liquor, beer, and wine taxes are projected to total about \$40 million in FY 2010. Under current law, a little less than 20 percent of that money, or about \$8 million, is allocated to the state Department of Public Health and Human Services, with a portion of that going to the department's Chemical Dependency Bureau. In FY 2009, about \$4 million of alcohol tax money was spent for chemical dependency treatment offered through the Montana Chemical Dependency Center.

Court Data

The Office of Court Administrator reported 2008-2009 statistics on offenses related to driving under the influence:

- A total of more than 13,300 cases were handled by city, county, and state courts (not including tribal courts). Of these offenses, about 10,000 were first offenses, 1,700 were second offenses, 350 were third offenses, and 458 were fourth (felony) offenses. The remainder of the cases involved underage drinking and driving under the influence in commercial vehicles.
- More than \$12.6 million was assessed against defendants in court fees, fines, surcharges, and other costs. About \$2.8 million of the assessments were suspended or credited – about \$5.3 million has been collected so far.
- After payment of restitution, surcharges, and public defender costs, fines and court assessed costs are paid for DUI court and treatment.
- The typical fine assessed by the courts for second, third, and fourth offenses was the minimum amount allowed by law for that offense.

Sobriety Pilot Project

A panel of speakers, including Attorney General Steve Bullock, discussed South Dakota's nationally recognized

24/7 sobriety program. The panel also described a pilot project in Lewis and Clark County that is similar to the South Dakota program. Under the pilot project, which started in early May, anyone arrested for a second or subsequent DUI must, as a condition of bail, take a breath test twice a day and pay \$2 for each test. If the person tests positive for alcohol consumption or fails to show up for the test, the person's bond is immediately revoked.

In South Dakota, fees paid by offenders cover the entire cost of the program. The South Dakota program not only covers pre-conviction bail conditions but also includes twice-a-day breath testing after conviction as a condition of probation or parole. The program has been credited with dramatically reducing recidivism and lowering jail costs. Between 2007 and 2008, the number of alcohol-related traffic fatalities in South Dakota declined by 33 percent.

Preliminary Bill Drafts, Public Comment

The committee considered several preliminary bill drafts related to the SJR 39 study of driving under the influence of alcohol or drugs. Each bill draft has been assigned a temporary LC number with the following short titles:

- LClj01 - Driver's license sanctions for youthful offenders;
- LClj02 - Allow game wardens to issue minor-in-possession tickets;
- LClj03 - Mandate responsible alcohol server and sales training (draft in progress);
- LClj04 - On-call judge for blood alcohol content (BAC) test search warrant;
- LClj05 - Per se limit for dangerous drug impaired driving;
- LClj06 - Support and funding for DUI courts (draft in progress);
- LClj07 - Allow cities to establish courts of record;
- LClj08 - Strengthen assessment, course, treatment laws (draft in progress);
- LClj09 - Mandate residential treatment for certain misdemeanor impaired driving offenses (draft in progress);

- LClj10 - Extend court jurisdiction to one year for misdemeanor impaired driving; and
- LClj11 - Eliminate 5-year “look back” limit for counting prior impaired driving convictions.

The committee is still considering these bill drafts and may or may not include them in its final recommendations. Other recommendations also may emerge.

The committee invites the public to comment on each of the bill drafts. The drafts (except for those bills noted above as “draft in progress”) are on the committee website at leg.mt.gov/ljic. Scroll down to the “Legislation” link to access them.

Send written comments to Sheri Heffelfinger, Montana Legislative Services Division, P.O. Box 201706, Helena, MT, 59620; by email to DUIbillcomment@mt.gov; or by fax to (406) 444-3036.

Next Meeting June 29-30

The next meeting of the Law and Justice Interim Committee is June 29-30 in Room 137 of the Capitol, beginning at 8 a.m. each day. The meeting agenda includes:

- a review and discussion of the committee’s mental health diversion and jail suicide prevention bills from last interim (HB 130, HB 131, HB 132, and HB 60);
- preservation and storage of biological evidence for DNA testing in felony criminal cases under the committee’s SJR 29 study; and
- public hearings and committee action on the preliminary DUI bill drafts under the SJR 39 study.

For more information, visit the committee website at leg.mt.gov/ljic or contact Sheri Heffelfinger at 406-444-3496 or sheffelfinger@mt.gov.

Audit Committee to Meet June 23

The Legislative Audit Committee will meet at 9 a.m. June 23 in Room 172 of the State Capitol to review recent audits of state programs or services. The committee will consider reports on these topics:

Information Systems Audits:

- Statewide Accounting, Budgeting and Human Resource System (SABHRS) – Department of Administration

Performance Audits:

- Montana Public Vehicle Fueling Program – Department of Administration, Montana Department of Transportation
- Home and Community Based Medicaid Services – Department of Public Health and Human Services
- Water Rights Adjudication – Department of Natural Resources and Conservation, Montana Water Court, Reserved Water Rights Compact Commission

The committee also will consider reappointment of the legislative auditor. Sen. Mitch Tropila chairs the 12-member, bipartisan committee.

The Legislative Audit Division provides independent and objective evaluations of the stewardship, performance, and cost of government policies, programs, and operations. The division is responsible for conducting financial, performance, and information system audits of state agencies or their programs, including the university system.

For more information, call the division at 406-444-3122 or visit leg.mt.gov/audit. To report improper acts committed by state agencies, departments, or employees, call the division fraud hotline at 800-222-4446 or 406-444-4446 (in Helena).

Legislative Council Meeting Set June 2

The three subcommittees of the Legislative Council (Rules Subcommittee, Legislative Space Subcommittee, and Management Subcommittee) were scheduled to meet June 1 followed by a full council meeting on June 2. Agendas and meeting materials are available on the council’s website at leg.mt.gov/legcouncil. Coverage of the June meetings will be in the July issue of *The Interim*.

The next scheduled meeting of the Legislative Council is Sept. 14. For more information, contact Susan Byorth Fox at 406-444-3066 or sfox@mt.gov.

Legislative Finance Committee to Focus on Next State Budget Cycle in June

The Legislative Finance Committee will meet June 14-15 in Room 172 of the Capitol. The committee will convene at 1 p.m. June 14 and 8 a.m. June 15.

An agenda and other meeting materials will be available on the committee website at leg.mt.gov/lfc. For more information, contact Amy Carlson, director of the Legislative Fiscal Division, at acarlson@mt.gov, or any member of the LFD staff at 406-444-2986.

The committee is scheduled to hear the following presentations:

- a discussion of options in the Reference Book to reduce expenditures or reallocate revenues to close the anticipated state general fund budget gap for the 2013 biennium;
- an evaluation of the performance measurement process for the 2013 biennium budget;
- an update on the activities and a discussion of the role of the state's chief information officer related to information technology;
- a follow-up discussion on the fiscal crisis in state parks, including options for revenue and property management;
- a discussion of challenges faced by the Montana correctional system;
- a follow-up discussion on the state public defender, including options for cost containment;
- an update on health care reform; and
- a discussion on the preparation and planning for legislative budget deliberations for the 2013 biennium budget.

Performance Measurement Workgroups

The performance measurement workgroups are scheduled to meet June 14 in the Capitol. In order to accommodate the five budget sections, meetings will be in different rooms and at different times. The schedule can be found at http://www.leg.mt.gov/css/fiscal/PM_Agency.asp.

The Finance Committee has continued this interim to focus on monitoring performance toward meeting agency program goals and initiatives based on this biennium's appropriations.

Revenue Committee Reviews Property Reappraisal, Plans for Revenue Estimates

The Revenue and Transportation Interim Committee continued to work on cyclical property reappraisal

and discussed ways to get an early start on the revenue estimating process for the next legislative session during its April meeting.

The committee also asked staff to draft two proposals dealing with property-tax circuit breakers. One would revamp how property tax assistance is provided to homeowners and renters and the other would expand existing property tax assistance programs.

Residential, Commercial Property Reappraisal

At the April 29 meeting of the Residential and Commercial Property Reappraisal Subcommittee, Bob Gloudemans, with the firm of Almy, Gloudemans, Jacobs & Denne, summarized the latest draft report on the sales assessment ratio studies. Gloudemans gave a more detailed report on the studies to the full committee April 30.

According to the study, residential values were generally very close to appraised values determined during the latest reappraisal cycle, with commercial values somewhat less so. The value of unimproved class four land showed the greatest variation from appraised values.

Lee Heiman, legislative attorney, said that the results of the sales assessment ratio study do not automatically lead to changes in property valuations. However, the Legislature may use information provided by the study for any changes it wants to make next session to the cyclical reappraisal laws.

Mike Walker, NAI Business Properties Billings; Ross Halvorson, Department of Revenue; and Gloudemans discussed their perspectives on commercial property valuation.

The department reported on the Extended Property Tax Assistance Program. The program is intended to help residential taxpayers with above average increases in property valuation and taxes. The department said that the application rate in Flathead and Lake counties, which had the greatest increase in average residential property values, was very low. The low return rate may be due to eligibility requirements of the program.

At the next meeting, the subcommittee will discuss the disclosure of property sales, reducing the length of reappraisal cycles, and ways to adjust EPTAP. The valuation of commercial property will also be discussed.

Ag Land, Forest Land Property Reappraisal

At the April 29 meeting of the Agricultural and Forest Land Property Reappraisal Subcommittee, the Department of Revenue told the subcommittee that owners of agricultural land, residential and commercial land and improvements, or forest land who had not previously filed would be allowed to file for an informal review (the so-called AB 26 process) with the department through June 30, 2010, for property value changes that went into effect in 2009.

For property owners who file an AB 26 before the cut-off date, changes in value or classification of the property will apply in the 2010 and succeeding property tax years. Property owners will not be allowed a refund on taxes paid for the 2009 property tax year. The department recently adopted rules providing for filing this property tax year and specifying that a request for informal review in the future must be filed within 30 days of receiving an assessment notice.

Subcommittee members urged the department to make every effort to inform property owners of the opportunity to file for an informal review.

CA Daw, the department's chief legal counsel, described proposed rules for correcting the value before reappraisal for agricultural land that had a change in productivity only. For taxpayers who filed a timely AB 26 last year, the corrected value will apply in tax year 2009; for all other taxpayers the corrected value will apply in the 2010 property tax year and will be phased-in over a five-year period.

Mike Green, representing the petitioners in *Lucas v. Montana Department of Revenue*, and Daw, representing the department, discussed the status of the lawsuit challenging the phase-in of certain agricultural land.

The subcommittee will meet in August to continue its review of the reappraisal of agricultural land.

Bill Drafts on Property Tax Assistance

Since September the committee has been examining residential property-tax circuit breaker programs. One type of program provides property tax assistance for the portion of a taxpayer's property tax bill that exceeds a percentage of income. Another type of program reduces property taxes by a fixed percentage within a given income class.

The downside of this type of program is that property tax assistance for a taxpayer may drop dramatically if the taxpayer has even a small increase in income.

The committee asked staff to prepare two bill drafts for consideration in August. The first would establish a property-tax circuit breaker program for residential property taxpayers and renters. The amount of assistance would be based on income and the amount of property taxes paid directly or indirectly through rent. The proposal would replace the existing property-tax assistance program for low-income property taxpayers, the property tax reduction for disabled veterans, the elderly homeowner and renter credit, and the extended property tax relief program.

The other proposal would expand existing programs by reducing the amount of loss in property tax assistance because of a small increase in income. The committee will discuss the bill drafts in August.

Following two staff reports, one comparing how other states estimate revenue for general appropriations and the other suggesting ways to improve the Legislature's revenue estimating process, the committee decided to get a headstart on the process this interim. At the committee's August meeting, a panel will discuss the various aspects of the revenue estimating process.

The committee also heard presentations on a variety of topics including:

- an update on general fund revenue collections;
- a report on the SJR 16 study of uninsured motorists dealing with automobile liability insurance that bases insurance premiums on actual miles driven; and
- reports from the Department of Revenue and the Montana Department of Transportation.

Next Meeting Rescheduled

The committee has rescheduled its July 15-16 meeting to Aug. 2-3. Meeting times for the full committee and property reappraisal subcommittees have not yet been determined.. 3.

For more information about the committee, contact Jeff Martin, committee staff, at 406-444-3595 or jmartin@mt.gov. Or visit the committee website at leg.mt.gov/rtic.

Legislative Panel Narrows Options for Redesign of Public Retirement Plans

On May 19, the State Administration and Veterans' Affairs Interim Committee voted to focus on two retirement plan design options when it meets again in June. HB 659 directs the committee to study the state's retirement systems and offer a redesign of the Teachers' Retirement System (TRS). As part of its work, SAVA is also exploring the option of modifying or redesigning the Public Employees' Retirement System (PERS).

Dave Slishinsky and Doug Fiddler from Buck Consultants, assisted the committee in narrowing the options. They reviewed the results of an earlier survey of committee members. The survey identified values the committee wished to seek with a new or modified plan design and highlighted risks the committee wished to avoid with any changes. After describing several different plan designs, the consultants showed how those plans might match up with SAVA's values or help mitigate the risks SAVA wanted to avoid.

The committee decided to focus its efforts on a money purchase plan and a revised defined benefit plan. At its next meeting June 24-25, the consultants will discuss how each plan might compare against the current TRS and PERS defined-benefit plans, including benefit adequacy, possible costs, and income replacement for "sample" system members. The committee will then determine which of the plans it wants to submit to TRS and PERS actuaries for a more in-depth cost analysis.

At the May meeting, the committee also discussed, but did not make recommendations on, legislative proposals submitted by retirement system stakeholders. Section 5-5-228, MCA, requires the committee to "solicit and review" stakeholder proposals each interim and to make recommendations to the next Legislature on whether a proposal should be enacted, rejected, or enacted with amendments. SAVA will take up the subject again at its June meeting.

Also in June, the committee will review legislative concepts developed by state agencies, as it is required to do each

interim. When available, an agenda and other meeting materials will be posted on the SAVA website at leg.mt.gov/sava.

SAVA will meet June 24-25 in Room 137 of the Capitol. The time has not yet been determined. For more information, contact Rachel Weiss, committee staff, at rweiss@mt.gov or 406-444-5367.

Water Policy Committee Considers Draft Proposal Related to Water Marketing

At its May meeting, the Water Policy Interim Committee began discussing in earnest proposals for the 2011 Legislature.

The committee debated a bill draft that would enable the marketing of water to other users without specific contracts in place. Currently, in order to market water, the water right holder must identify how much water will be used, where it will be used, and who will use it.

The proposal would allow a water right holder to change a water right from its current use, such as irrigation, to marketing for aquifer recharge or mitigation. That water could be purchased by another user to offset the effects of a new appropriation, such as a community water system for a subdivision.

The committee also agreed to discuss a proposal that would establish a minimum lot size for which a septic system would be allowed. The July meeting agenda will include a proposal to clarify local government authority to require public water and sewer.

On May 11, the committee toured the North Hills area of the Helena Valley. Several of the issues discussed by the committee can be seen on the ground in the North Hills, including a ground water monitoring site, a controlled ground water area, and residential development using individual wells and septic systems.

For more information, contact Joe Kolman at 406-444-9280 or jkolman@mt.gov. Or visit the committee website at leg.mt.gov/water.

Why a Partisan Ballot in Montana Primary Elections?

By David Niss

Legislative Attorney

Q. What Montana law governs the process of primary elections; why does the law require that each ballot be a partisan ballot (a ballot for one political party); and could a blanket primary election ballot ever be constitutional?



A. The holding of primary elections in Montana is governed by Title 13, chapter

10, of the Montana Code Annotated (MCA). The requirement that each ballot be for a separate political party is contained in 13-10-209(1)(a), MCA, which states:

[T]here must be a separate ballot for each political party entitled to participate. The name of the political party must appear at the top of the separate ballot for that party and need not appear opposite each candidate's name.

The history notes for this section and many others in this chapter show that many of the principal sections of that title and chapter were enacted in 1969. However, those provisions have a history going back to a much earlier time. The history notes of the 1947 Revised Codes of Montana (RCM) for Title 23, chapter 9 (Party Nominations by Direct Vote – The Direct Primary), show that chapter was originally enacted by initiative petition in 1912 and was then reenacted into the RCM in 1921.

In determining whether the Montana Legislature has ever considered a different system of primaries other than party primaries, a number of legislative reports were unearthed including a 1969 report providing the results of a study conducted by what was then a subcommittee of the Legislative Council. It recommended repealing the entire Title 23 of the RCM. The recommended legislation repealed that title and enacted the primary election statutes now found in Title 13, chapter 10, of the MCA. However, in the course of the repeal of Title 23, which was the 1912 law enacted by initiative, and enactment of what became today's primary election statutes, neither the 1969 report nor any of the other reports of legislative studies

of election statutes seem to have considered any other method of nominating candidates for the purposes of the general elections, at least for the nomination of major party candidates. The 1969 study did result in a change in the law governing the nomination of independent and minority party candidates.

A blanket primary election is a primary election in which all candidates for elected office run in the same primary regardless of political party. Under this system, the top two vote getters advance to the next round. The U.S. Supreme Court found that a blanket primary system in which voters of any party may vote a primary ballot to determine what candidate will represent that party in the general election is unconstitutional in *California Democratic Party v. Jones*, 530 U.S. 567 (2000).

In *Jones*, the Supreme Court held that the California initiative measure was unconstitutional as a violation of a voter's First Amendment rights of association, or, in this case nonassociation, by forcing the party to be represented in the general election by a candidate with a dubious or nonexistent belief in the tenets of that particular party. The gravamen with regard to the California system, which was held unconstitutional in *Jones*, was that under the terms of the initiative, the candidate of each party who won the greatest number of votes "is the nominee of that party at the ensuing general election."

In *Democratic Party of Washington v. Reed*, 343 F.3d 1198 (2003), the Ninth Circuit Court of Appeals invalidated a Washington initiative nearly identical to that invalidated by the U.S. Supreme Court in *Jones*. Following the decision of the Ninth Circuit in *Jones*, the Washington State Grange then proposed another initiative (I-872) as a replacement, which was then itself also the subject of a civil action, as reviewed by the U.S. Supreme Court in *Washington State Grange v. Washington Republican Party*, 552 U.S. 442 (2008).

In that latest action, the U.S. District Court and the Ninth Circuit Court of Appeals held that I-872 was also unconstitutional because the primary ballot was still too similar to that held unconstitutional in *Jones*. However, this time the U.S. Supreme Court reversed, holding that

a “facial” challenge (a lawsuit unrelated to any particular set of facts in the application of the primary ballot format required by law) is unfavored by the Court and that there were sufficient differences in the second Washington initiative measure (I-872) to distinguish that initiative measure from the first initiative measure held unconstitutional in *Reed*.

The distinguishing factors in Washington were:

1. the candidates themselves self-designated their parties of “preference”;
2. there was nothing in the election laws indicating that the candidates were the official representatives of their parties or that their parties in any way had endorsed the candidates (to the contrary, section 434-262-012 of the Washington Administrative Code provided that any election regulations specifically provide that the primary “does not serve to determine the nominees of a political party but serves to winnow the number

of candidates to a final list of two for the general elections”);

3. the candidates for each position with the highest and second highest vote totals advanced to the general election regardless of which political party the candidates have designated as the party with which they want to be affiliated; and
4. election officials could reduce any voter confusion over whether a particular candidate “represents” a particular party by publishing election information, either on the ballot or separately, that a party has not necessarily endorsed or otherwise chosen a candidate to represent the party but that the candidate has simply chosen a particular party as that with which the candidate identifies.

When these four conditions are met, a blanket primary election ballot could pass constitutional muster.

For more information, contact David Niss, legislative attorney, at 406-444-4410 or dniss@mt.gov.

The Back Page

No Time for Repose: A Look at Public Employees’ Retirement

By Dave Bohyer

Legislative Services Division Research Director

Last February the Pew Center on the States reported that the 50 states face a combined \$1 trillion gap between the amount of retirement benefits owed to current and future public retirees and the amount held in trust to pay the future benefits.¹

The nearly unprecedented declines in the financial markets that resulted from the collapse of the “technology bubble” (2001-2003) and the “housing bubble” (2007-2009) are often cited as primary reasons for the current pension funding shortfalls. But just as frequently,

the levels of pension benefits, sometimes labeled as “rich” or “lavish,” are mentioned as the cause.²

In light of concerns about the financial health of Montana’s public employee retirement systems, the Legislature’s State Administration and Veterans’ Affairs Interim Committee (SAVA) is studying the state’s public employee retirement systems as required by HB 659.

This article briefly explores Montana’s largest system, the Public Employee Retirement System (PERS), including the system’s funded status, the policy principles underlying the system, and a snapshot of the retirement benefits of a typical PERS retiree.

1 See *The Trillion Dollar Gap: Underfunded State Retirement Systems and the Road to Reform*; The Pew Center on the States, February 2010. Unfortunately for the purposes of this article, Pew’s trillion dollar gap includes the value of future post-retirement medical benefits, which are minimal for public employees in Montana, as well as post-retirement pension benefits.

2 See, for example, “Pension Deficit Disorder” in *fedgazette*, by Ronald A. Wirtz - Editor, May 2006, “Gilt-Edged Pensions” in *Forbes Magazine*, by Stephane Fitch, February 26, 2009, “Pension Bomb Ticks Louder” in *The Wall Street Journal* online, April 27, 2010. <http://online.wsj.com/article/SB10001424052702303695604575181983634524348.html>

Overview

The state Public Employees' Retirement System covers about 54,000 current and former state and local public employees; about 29,000 are active members and about 7,000 are retirees.³ According to the most recent actuarial analysis of PERS, on June 30, 2009, the value of system assets was \$4.002 billion and the value of system liabilities was \$4.792 billion, indicating an unfunded liability of \$790 million.⁴ The funded ratio of PERS, or the ratio of assets to liabilities, was 83.5 percent as of July 1, 2009, a decline from 91 percent in 2008.⁵

While an unfunded liability of \$790 million is daunting, it does not have to be erased immediately. Rather, it needs to be reduced over time so that, like a home mortgage, it can be amortized over a reasonable period of time. Section 19-2-409, MCA provides that the reasonable time period may not be more than 30 years.

Without structural changes to the PERS,⁶ there are basically three ways by which the current unfunded liability can be amortized in 30 years:

1. Future investment returns on the system's assets are higher than 8 percent annually, or the rate of return assumed for the portfolio of assets;
2. More money can be deposited in the PERS trust fund, either as a one-time infusion or through increased, ongoing contributions; or
3. A combination of higher-than-expected returns and additional deposits.

3 The other 8,000 or so members of PERS are terminated members, that is, they are no longer contributing to the PERS, but they are also not retired and, therefore, not receiving benefits or accruing additional benefits. PERS does not cover: K-12 teachers or administrators or the faculty or administrators within the university system; public safety employees; or judges.

4 The value of assets and liabilities reported in the analysis and here are the "actuarial" values rather than the "actual" values. For a discussion of the distinction between "actuarial" and "actual" values, see Public Employees' Retirement System of the State of Montana: Actuarial Valuation as of June 30, 2009, prepared by Cheiron, October 2009, in "Section II: Assets", p. 8.

5 Public retirement system experts consider a funding ratio of 80% or higher to indicate an adequately funded public pension system. See Issue Brief: The Funding of State and Local Pensions 2009-2013, by Alicia H. Munnell, et al., Center for State and Local Government Excellence, April 2010, p. 5.

6 The SAVA is currently exploring options to change the structure of the PERS. For more information, contact Rachel Weiss, research analyst, at the Legislative Services Division.

PERS Structure and Pension Benefits

The Legislature has the authority to establish the structure of public employee retirement plans, including the benefits to which employees and retirees become eligible or entitled. In short, the Legislature statutorily prescribes who must and who may participate in the PERS, the contributions made by employers and employees, the formulas used to determine an employee's retirement benefit, and so on.

The Legislature created the Public Employees' Retirement Administration to administer the day-to-day functions of the systems and the Public Employees' Retirement Board to oversee PERA and the administration of the PERS. The state Board of Investments manages and invests the assets of the PERS held in trust for the retirees and beneficiaries of the plan. In general, the provisions governing public employee retirement are found in Title 19, MCA.

In brief, the structure of the PERS includes the following elements:

- All permanent employees of the state, full-time and part-time, must participate in the PERS. The same categories of public employees in most counties and municipalities also participate in the PERS.
- A person becomes "vested" in the PERS after 5 years of service. Vesting in the PERS entitles the employee to certain benefits, generally prorated on the basis of years of service.
- A PERS member can retire: (1) at age 65, regardless of years of service; (2) at age 60 with at least 5 years of service; (3) after 30 years of service, regardless of age; or (4) either at age 50 or older or with 25 years of service, but with the benefit reduced on an actuarial basis.
- The pension benefit earned by a PERS member is essentially a function of: (1) the member's final average salary; (2) the numbers of years worked in a PERS-covered job; and (3) a "multiplier," generally 1/56 (1.786 percent) for each year worked. The pension benefit of a member who takes "early retirement," i.e., a member who is under 60 years of age and has fewer than 30 years of service, is actuarially reduced by 6 percent for each year under 60 years of age or under 30 years of service.

There are various nuances to the structure of PERS outlined above, but most state employees (and covered local government employees) are subject to the four elements described above.

Legislative Policy on Public Retirement

The Legislature delegated to the State Administration and Veterans' Affairs Committee (SAVA) the responsibility for establishing "principles of sound fiscal and public policy as guidelines" for the state's public employee retirement plans.⁷ In fulfilling that responsibility, SAVA adopted four guiding principles:

- Pensions should provide the base of financial security in retirement.
- Pension funding should be a contemporary obligation.
- Pension investments should be governed by the Prudent Expert Rule.
- Pension benefits should be equitably allocated among beneficiaries.

Contemporary Funding of Obligations: The financial and actuarial health of the PERS is based on paying for retirement obligations while retirement benefits are being accrued. Paying for future benefits requires employers and, in Montana, employees to make contributions for the retirement benefits accruing to the employee while working as an active member of the system, plus meeting various other actuarial assumptions.

By law, the employee contributes 6.9 percent and the employer contributes 7.17 percent of the employee's total wages or salary.⁸ The combined contribution of 14.07 percent of wages and salaries is more than adequate to pay the normal cost of benefits prescribed by statute, with the contributions in excess of normal costs allocated to paying off the unfunded liabilities of the system incurred from previously inherited liabilities, prior benefit enhancements, lower-than-expected investment returns, and other factors.

Prudent Investment of Assets: The Board of Investments (BOI) invests the assets of the PERS. Constitutional and statutory provisions require the BOI

to invest PERS assets "in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims."⁹ The Public Employees' Retirement Board is required to establish the actuarial assumptions upon which the financial health of the PERS is based.¹⁰

Allocation of Benefits: The benefits to which PERS retirees and beneficiaries are eligible or entitled are prescribed by statute, PERB rules, and court decisions. Basically, pension benefits are determined by formula, not by an individual employee's or retiree's circumstances or by whim of the employee's supervisor or the PERB/PERA. As such, each member or retiree of the PERS is eligible for or entitled to the same pension benefits as every other similarly situated member or retiree.

Base of Financial Security: The principle established by SAVA suggests that the PERS pension benefit should provide the "base" of financial security in retirement. By statute, a retiree's pension benefit is equal to the retiree's final salary times the years of service that the retiree actively participated in PERS times a multiplier that represents the percentage of the retiree's final salary that the retiree will receive for each year of service.¹¹

Benefit Levels and Variations

According to data that covers all 17,000 PERS retirees and benefit recipients, the average recipient receives a monthly benefit of \$1,049 (\$12,588 annually).¹² That benefit amount represents the typical retiree, who retired after an average of 19.34 years of service at an average age of 59.2 years at time of retirement (and who, on June 30, 2009, averaged 71.9 years of age). From that data, the average retiree's annual final salary can be estimated at about

9 Art. VIII, sec. 13(3), Const. See also 17-6-201 and 19-2-504, MCA.

10 Section 19-2-403(8), MCA.. The assumptions considered by the PERB include factors ranging from the expected return on invested assets to changes in employee pay to retiree/beneficiary mortality, among others.

11 Rather than "final salary", the statute uses "highest average compensation", which is the retiree's highest 36-consecutive months of wages or salary. Most often, a retiree's final salary is the same as the highest 36-consecutive months of wages or salary. "Years of service" is the number of years that the retiree was an active member of PERS. The "multiplier" is 1.786% for a retiree having fewer than 25 years of service and 2% for a retiree having 25 years or more of service.

12 Data are from the Public Employees Retirement Administration "green sheets", and are based on June 30, 2009, actuarial valuations and MPERA data. "Green sheets" are available through the PERA.

7 Section 5-5-228, MCA.

8 The system is also funded from earnings on invested assets. In fact, more than 60% of a retiree's pension benefit is assumed to be funded from investment earnings.

Table 1
Estimated Initial Monthly PERS Pension Benefit
at Various Retirement Ages and Years of Service
for PERS Retiree with \$36,450 Final Salary*

| Years of Service | Age at Retirement | | |
|------------------|-------------------|-------|-------|
| | 50 | 55 | 60+ |
| 5 | \$109 | \$190 | \$272 |
| 10 | 217 | 380 | 543 |
| 15 | 326 | 570 | 815 |
| 20 | 435 | 760 | 1,086 |
| 25 | 608 | 1,065 | 1,521 |
| 30 | 1,825 | 1,825 | 1,825 |
| 35 | - | 2,129 | 2,129 |
| 40 | - | - | 2,433 |
| 45 | - | - | 2,738 |

* The final salary of \$36,450 is the approximate average final salary of all PERS retirees. NOTE: Shaded cells show reduced, early-retirement benefits.

\$36,450 (\$3,037 per month).¹³

Because employees vested in the PERS have many options for deciding when to retire from PERS service, both in terms of age and in years of service, and because employees' final salaries will vary, the level of pension benefits can and does vary. Table 1 (above) illustrates some possibilities of pension benefits for employees retiring with a final salary of \$36,450, or the approximate average final salary of PERS retirees.

Other Considerations: Whether any of the PERS pension benefit amounts reported in or estimated from PERS retiree or beneficiary data provides "the base of financial security in retirement" or is "rich" or "lavish" is open to discussion. Regardless, other factors should also be considered.

For example, an employee retiring from PERS employment in 2010 who is eligible for Social Security could also expect to receive a monthly Social Security

benefit.¹⁴ Using the approximate average final salary of \$36,450 for all PERS retirees, the same retiree's monthly Social Security benefit would be about \$1,082 in 2010.¹⁵ When the estimated Social Security benefit is combined with the PERS pension benefit from this example, the combined monthly benefit amount is \$2,131. At that amount, the average retiree could anticipate combined PERS and Social Security pension benefits replacing about 70 percent of the average retiree's pre-retirement income.¹⁶

Inflation Protection: In 1997, the Legislature provided for a guaranteed annual benefit adjustment (GABA) to shelter Montana public employee pensions from the effects of inflation. The legislation also increased the contribution rates and modified certain benefits to pay for the adjustment, defined "actuarially sound basis," and increased the amortization period over which the PERS actuarial liability would be liquidated. Essentially, the extension of the amortization period of the PERS liability is similar to a homeowner remodeling a bathroom or kitchen and paying for the remodel by refinancing the mortgage, to maintain the monthly payment amount but extending the payout schedule over a period of time longer than what remained on the original mortgage.

Regional Comparisons

Policymakers often ask how Montana's retirement system compares to other states in the region. Using information provided in the annual reports from the respective retirement systems in Idaho, North Dakota, South Dakota, and Wyoming, Table 2 (at right) shows comparisons to Montana for the funded ratio of each system, the contribution rates for the employees and employers of each system, the "multiplier" used in each state's benefit formula, and the annual pension benefit paid to the average retiree from each state's system.

14 To be eligible for a Social Security retirement benefit, a person must have accumulated 40 credits of work on which the person contributed to Social Security. The 40 credits of Social Security-covered work amounts to 10 years of covered work, about one-half of the average years of service (19.34) of current PERS retirees.

15 See examples of benefit calculations at Social Security Online; <http://www.socialsecurity.gov/OACT/quickcalc/index.html>.

16 Retirement "experts" recommend that people should construct a retirement plan that will generate sufficient income to replace between 70% and 100% of pre-retirement income. See, for example, Money Magazine, "Ultimate Guide to Retirement", at <http://money.cnn.com/retirement/guide/>.

13 Author's calculation using the "green sheet" data and the benefit formula, $B = X \cdot Y \cdot Z$, where "B" is the pension benefit amount; "X" is the retiree's final salary (highest consecutive 36 months); "Y" is number of years of service; and "Z" is the multiplier for the retiree. The \$36,450 average final salary would be in FY 2009 dollars.

Table 2
Comparison of Montana PERS
to Surrounding States: Selected Elements
of Public Employee Retirement Systems

| State | Contribution Rate | | Multiplier | Avg Annual Benefit | Funded Ratio |
|-------|-------------------|----------|------------|--------------------|--------------|
| | Employee | Employer | | | |
| MT | 6.90% | 7.17% | 1.79% | \$12,588 | 83.5% |
| ID | 6.23% | 10.39% | 2.00% | 15,279 | 73.3% |
| ND | 4.00% | 4.12% | 2.00% | 10,120 | 85.1% |
| SD | 6.00% | 6.00% | 1.70% | 15,969 | 91.8% |
| WY | 5.57% | 5.68% | 2.13% | 15,518 | 87.5% |

NOTE: For additional comparisons, use an online search engine to search for “[Name of State] public employee pension,” then the state’s PERS site for the annual report.

Conclusion

The gap between the actuarial assets and actuarial liabilities of the Montana PERS is considerable, perhaps even daunting. On the bright side, the gap does not have to be completely closed in only a year or two, but it must be addressed over a 30-year amortization period, much like a home mortgage. On the not-so-bright side, the principal and interest due on the PERS mortgage currently exceed the portion of the state’s budget allocated to pay off the mortgage liability within the 30-year time frame.

There is ongoing discussion about whether the asset-liability gap in PERS is due to underperforming financial markets or to inordinately rich pension benefits for public

retirees. Regarding the performance of the financial markets: as measured by the performance of the Standard and Poor’s 500 Index, the past 10 years have given us two of the seven worst 1-year declines over the 138-year period dating back to 1871.¹⁷ The 37 percent decline in 2008 is second only to the 44 percent decline in 1931 and the 22 percent decline in 2002 is worse than all but six of the 138 years (with both 2008 and 2002 included among the six worst).¹⁸

Whether the average PERS pension benefit of about \$1,049 per month paid to Montana public employment retirees is too lavish, too austere, or about right is largely in the eye of the beholder. As a matter of public policy, the benefit amount is subject to change by the Legislature – as are the other components of the public retirement systems – by amending existing statutes to effect whatever policy legislators wish to enact.¹⁹ In that context, the SAVA-established principle that “pensions should provide the base of financial security in retirement,” is likely to be a topic of discussion in the ongoing conversation on Montana’s public employee retirement systems. In that context, this is probably no time for repose.

17 Stock market data used in *Irrational Exuberance*, Robert Schiller, Princeton University Press, 2000, 2005, updated. The data is available online at http://www.moneychimp.com/features/market_cagr.htm.

18 The 12% decline in 2001 was the 16th worst performance and the 9.1% decline in 2000 was the 21st worst yearly return over the same 138-year period.

19 This statement must be tempered by noting that the retirement benefits paid to current PERS retirees and for which current PERS employees are or will become eligible are a “contract” and, therefore, likely are not subject to decrease by legislative action. However, the Legislature has free reign to establish for future employees whatever type of system it determines is advisable.

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

| June 2010 | | | | | | |
|-----------|---|--|---|--|--|----------|
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| | | 1 Rules Subcomm, 1 pm, Rm 102 Legislative Space Subcomm, 2:30 pm, Rm 102 Management Advisory/ Succession Planning Subcomm, 4 pm, Rm 102 | 2 Legislative Council, 8 am, Rm 102 | 3 | 4 | 5 |
| 6 | 7 | 8 | 9 | 10 Education & Local Govt Comm, time TBA, Rm 137 | 11 | 12 |
| 13 | 14 Legislative Finance Comm, 1 am, Rm 172 Teachers Institute on Representative Democracy, 1 pm, Rm 102 | 15 Teachers Institute on Representative Democracy, 8 am, Rm 102 Legislative Finance Comm, 8 am, Rm 172 | 16 Teachers Institute on Representative Democracy, 8 am, Rm 102 | 17 | 18 | 19 |
| 20 | 21 | 22 Legislative Computer System Planning Council, 9 am, Rm 102 | 23 Legislative Audit Comm, 9 am, Rm 172 | 24 State Admin & Veterans Affairs Comm, time TBA, Rm 137 | 25 State Admin & Veterans Affairs Comm, time TBA, Rm 137 | 26 |
| 27 | 28 Children, Families, Health & Human Services Comm, time TBA, Rm 137 | 29 Law & Justice Comm, 8 am, Rm 137 Economic Affairs Comm, 8:30 am, Rm 102 | 30 Law & Justice Comm, 8 am, Rm 137 | | | |

All interim committee meetings are held in the Capitol in Helena unless otherwise noted.

| July 2010 | | | | | | |
|-----------|--------|--|---|--|--|----------|
| Sunday | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday |
| | | | | 1 | 2 | 3 |
| 4 | 5 | 6 State-Tribal Relations Comm, Browning | 7 State-Tribal Relations Comm, Browning | 8 | 9 | 10 |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 |
| 18 | 19 | 20 | 21 | 22 Environmental Quality Council, time TBA, Rm 172 | 23 Environmental Quality Council, time TBA, Rm 172 | 24 |
| 25 | 26 | 27 | 28 Energy & Telecomm Comm, time TBA, Rm 172 | 29 Energy & Telecomm Comm, time TBA, Rm 172 | 30 | 31 |

**You can find the most up-to-date information
about legislative interim committee meetings
on the Legislative Branch website**

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